IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 6953 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT
and
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NATIONAL INSURANCE CO LTD
Versus
HUSEINBHAI KALUBHAI SHAIKH

Appearance:
DAKSHESH MEHTA for Appellant No. 1
MR SK BUKHARI for Respondent No. 1-2
MR HIMANSU M PADHYA for Respondent No. 3
RULE SERVED for Respondent No. 4

CORAM : MR.JUSTICE Y.B.BHATT
and
MR.JUSTICE M.C.PATEL

Date of decision: 17/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. On a joint request of learned counsel for the parties, this appeal is taken up for final hearing today.

2. This is an appeal under Section 173 of the Motor Vehicles Act, 1988 at the instance of the Insurance Company challenging the judgment and award of the Motor Accident Claims Tribunal (Aux.), Panchmahals in Motor Accident Claim Petition No.264 of 1995.

3. The learned counsel for the appellant insurer seeks to challenge the impugned award on quantum and merits.

4. It is by now a well-settled law that an insurance company who would be entitled to urge in appeal, only grounds arising from statutory defences permissible to the insurer under Section 149(2) of the Motor Vehicles Act, 1988. The only exception to the rule is where the insurance company has obtained the permission of the Tribunal under Section 170 of the said Act.

5. On the facts of the case, on inquiry with the learned counsel for the appellant, we are informed that an application under Section 170 of the Act had, in fact, been made before the Tribunal, and that the said application had also been granted.

5.1 On examination of the said order, which is the order below Exh.21, we find that it is a one word order:

`Granted'

6. This one word order passed by the Tribunal clearly fails to meet the principle laid down by the Supreme Court in the case of Shankerayya vs. United India Insurance Company Ltd. reported in AIR 1998 SC Page 2968 equivalent to (1998) 3 SCC Page 140. The clear-cut principle laid down by the Supreme court is to the effect that an order granting permission to the insurer to take up defences available to the owner and driver, must be an order in writing, and must be supported by reasons. As aforesaid, the order in the instant case does not contain any reasons whatsoever. In the premises aforesaid, the said order is of no effect.

7. In the premises aforesaid, the present appeal cannot be pressed by the insurance company on quantum and merits.

8. The learned counsel for the appellant is unable to point out any grounds arising from statutory defences available to the insurer under Section 149(2) of the Act. In the premises aforesaid, there is no substance in the present appeal and the same is accordingly dismissed with no order as to costs.

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